



**State of New Hampshire**  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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Hillsborough County Department of Corrections

Complainant

v.

AFSCME Local 3657, Hillsborough County  
Corrections Employees

Respondent

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Case No: G-0018-1

Decision No. 2005-060

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Hillsborough County Department of Corrections (hereinafter "the County") filed an unfair labor practice complaint on March 18, 2005, alleging that AFSCME Local 3657, Hillsborough County Corrections Employees (hereinafter "the Union") committed unfair labor practice in violation of RSA 273-A:5 II (f), and violated RSA 273-A:4 as well, when it by-passed a certain step of the grievance procedure set forth in the parties' collective bargaining agreement (hereinafter "CBA"). More specifically, the County states that the grievance procedure under which the parties functioned requires that a "pre-arbitration" meeting be held in an attempt to resolve the grievance. According to the County, after the Board of County Commissioners denied a grievance filed by James Sheldon ("the Sheldon grievance") on September 22, 2004, the Union thereafter filed a request for arbitration and completely by-passed the pre-arbitration stage. Since, as asserted by the County, the Union failed to follow the contractual grievance procedure in this manner, it violated RSA 273-A:5 II (f) and made the grievance procedure otherwise unworkable in violation of RSA 273-A:4. As remedies, the County requests that the PELRB (1) find the Union to be in violation of RSA 273-A:5 (f) and RSA 273-A:4; (2) order the Union to cease and desist in its pursuing the Sheldon grievance to arbitration; and (3) order whatever further relief the Board deems just and proper.

The Union filed its answer denying the Union's charge on March 30, 2005. While the Union generally admits to the factual chronology as described in the County's complaint, it denies that it has committed any improper labor practice or otherwise violated RSA 273-A:4. By way of further answer, it states that the current CBA between the parties (for the period July 1,

2002 – June 30, 2006) does not require a pre-arbitration meeting to be held.<sup>1</sup> The Union also submits that even if such a meeting were supposed to be held, the Union is still not required to participate in that process if it would be a futile exercise to do so. At pre-hearing, it further maintained that the PELRB should decline jurisdiction at this time since the issue raised by the County in its complaint is one of procedural arbitrability that is appropriately decided by an arbitrator. Accordingly, the Union requests that the PELRB (1) deny the County's unfair labor practice charge, (2) order the County to proceed to arbitration on the Sheldon grievance; and (3) order such other relief as the Board deem just and proper under the circumstances.

A pre-hearing conference was conducted before the undersigned hearing officer on May 2, 2005 at PELRB offices, Concord, New Hampshire.

#### PARTICIPATING REPRESENTATIVES

For the County: Carolyn M. Kirby, Esq.

For the Union: James Dever, Esquire for Erin Goodwin, Esq.

#### ISSUES PRESENTED FOR BOARD REVIEW

- (1) Is the question of whether the Union complied with the terms of the parties' grievance procedure appropriately presented to an arbitrator for determination?
- (2) If not, has the Union failed to comply with the parties' mutually agreed upon grievance and arbitration procedure in violation of RSA 273-A:5 II (f)?
- (3) If so, what shall be the remedy?

#### WITNESSES

For the County:

1. James O'Mara, Jr., Superintendent
2. Lt. James Vacca
3. Officer Andrew Jubinville

For the Union:

1. Officer Andrew Jubinville
2. Steve Lyons, AFSCME Staff Representative

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each

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<sup>1</sup> The Union represented during the pre-hearing conference that the reference to the pre-arbitration meeting was intentionally deleted from the current CBA's grievance procedure. In response, the County's counsel indicated that that was not the parties' intent and that said omission constituted an inadvertent scribes' error.

party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

### EXHIBITS

Joint Exhibits:

1. 1995 – 2002 Collective Bargaining Agreement
2. 2002 – 2006 Collective Bargaining Agreement
3. Grievance dated July 9, 2004
4. Request for Arbitration, dated October 5, 2004

For the County:

None other than those marked as joint.

For the Union:

None other than those marked as joint.

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

### LENGTH OF HEARING

The time set aside for this hearing will be one-half (½) day. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

### DECISION

1. During the course of the pre-hearing conference, the Union indicated its intent to file a Motion to Dismiss, wherein it will assert that the question of procedural arbitrability being raised by the County in its complaint is appropriately decided by an arbitrator. Said motion shall be filed with the PELRB on or before **May 10, 2005**. The County's response to the Union's motion shall be filed with the PELRB on or before **May 25, 2005**.

2. Meanwhile, the parties' representatives shall meet, or otherwise confer, on or before **May 16, 2005** in order to compose a mutual statement of agreed facts. In this regard, the parties are directed to submit to the Board a chronology of events that led to the filing of the instant unfair labor practice charge, including, but not limited to, the date

of discipline and the date upon which the current CBA went into effect. The parties' representatives shall memorialize those facts upon which they can so stipulate, including the stipulations reached during the course of the pre-hearing conference, and file that document with the PELRB within five (5) days of said agreement.

3. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.

4. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.

5. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

**May 26, 2005 @ 9:30 AM**

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 5<sup>th</sup> day of May, 2005.



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Peter C. Phillips, Esq.  
Hearing Officer

Distribution:

Carolyn M. Kirby, Esq.

James Dever, Esq.